

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

ALONZIE WRIGHT, ET AL.,)
)
 Plaintiffs,)
)
 v.) No. 2:02-0077
) JUDGE HAYNES
CROSSVILLE ACQUISITION CORPORATION,)
 ET AL.,)
)
 Defendants.)

ORDER

Plaintiffs, former employees, filed this action under the Employee Retirement Income Security Act (“ERISA”), 29 U.S.C. § 1001 et seq. against the Defendants, Crossville Acquisition Corp. (“CAC”), their former employer, Steve Karol, and William Karol, CAC corporate officers. Plaintiffs assert claims for unpaid medical benefits, vacation pay and attendance bonus benefits under their collective bargaining agreement (“CBA”) with CAC.

Before the Court are the parties’ cross motions for summary judgment. (Docket Entry Nos. 98 and 100). From a review of the parties’ papers, the critical issue is whether the funds at issue are plan assets so as to give rise to a fiduciary duty. The Defendants had a agreement with Fleet Bank and its customers to draw upon funds to operate the company and pay company obligations, that would include medical bills whey they became due.

Under Southern Elec. Health Fund v. Kelley, 308 F.Supp. 2d 847 n. 10 (M.D. Tenn. 2003), company contributions to benefit funds, “constitute[] . . . plan assets under 29 U.S.C. § 1002(21)(A) as they become due.” Here, the Defendant paid medical bills of employees under that agreement as they became due, but Plaintiffs present proof that at that time, the Defendant did not do so. (See Docket Entry Nos. 42-47 and Docket Entry No. 103 Plaintiffs’ Response to

Defendants' Statement of Undisputed Facts at ¶9).

In the Court's view, material factual disputes exist on whether Defendants paid Plaintiffs medical bills as due. Accordingly, the parties' motions for summary judgment (Docket Entry Nos. 98 and 100) are **DENIED**.

Counsel for the parties have ten (10) days to submit an Agreed Order setting dates for the final pretrial conference and trial.

It is so **ORDERED**.

ENTERED this the 8 day of August, 2005.


WILLIAM J. HAYNES, JR.
United States District Judge